

## 48A C.J.S. Judges § 315

Corpus Juris Secundum | August 2023 Update

### Judges

Joseph Bassano, J.D.; Khara Singer-Mack, J.D.; Thomas Muskus, J.D; Karl Oakes, J.D. and Jeffrey J. Shampo, J.D.

### IX. Disqualification to Act

#### D. Objections to Judge and Proceedings Thereon

##### 2. Mode and Sufficiency of Raising Objection

###### a. General Considerations

## § 315. Verification of disqualification application

[Topic Summary](#) | [References](#) | [Correlation Table](#)

### West's Key Number Digest

West's Key Number Digest, [Judges](#)  51(3)

**A petition, application, or affidavit for disqualification of a judge must be verified or sworn to as prescribed by statute.**

Generally, a petition or application for change of judge must be verified.<sup>1</sup> That is, the application or motion must be supported by a sworn signature<sup>2</sup> or by signed affidavit of the party which is properly sworn to,<sup>3</sup> and affidavits not properly sworn to may be rejected.<sup>4</sup> Under some provisions, the affidavit or declaration supporting the application must be made under penalty of perjury,<sup>5</sup> and where the application is supported by an oral statement, such statement must be made under oath.<sup>6</sup> Attestation by a notary public is a sufficient verification,<sup>7</sup> but acknowledgement before a notary is insufficient.<sup>8</sup>

Under some statutes, an unverified application is sufficient,<sup>9</sup> and the moving party's signature is unnecessary.<sup>10</sup>

### CUMULATIVE SUPPLEMENT

#### Cases:

Defendant's motion for change of judge based on judicial misconduct, which included hand-written letter from one of the trial spectators stating that spectator observed what appeared to be the judge sleeping during trial, was technically inadequate under statute governing procedure for change of judge; filing in support of motion was required to contain an affidavit, and no reference

to a person with oath-administration authority appeared in letter or any document filed in support of motion, as required for written statement to constitute an affidavit. Kan. Stat. Ann. § 20-311d. *State v. Lyman*, 455 P.3d 393 (Kan. 2020).

**[END OF SUPPLEMENT]**

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Footnotes

- 1 Fla.—*R.M.C. v. D.C.*, 77 So. 3d 234 (Fla. 1st DCA 2012).  
  
Ill.—*In re J.D.*, 332 Ill. App. 3d 395, 265 Ill. Dec. 556, 772 N.E.2d 927 (1st Dist. 2002).  
  
Tex.—*Davis v. State*, 2008 WL 3845284 (Tex. App. Waco 2008).
- 2 Fla.—*Santisteban v. State*, 72 So. 3d 187 (Fla. 4th DCA 2011).
- 3 U.S.—*Hayes v. National Football League*, 463 F. Supp. 1174 (C.D. Cal. 1979).  
  
Fla.—*Bell v. State*, 768 So. 2d 22 (Fla. 1st DCA 2000).  
  
**Signature of attorney insufficient**  
Ind.—*Marion City Court v. State ex rel. Sample*, 243 Ind. 371, 185 N.E.2d 524 (1962).
- 4 U.S.—*U.S. v. Love*, 259 F. Supp. 947 (D.N.D. 1966).  
  
Mo.—*State v. Creighton*, 330 Mo. 1176, 52 S.W.2d 556 (1932).
- 5 Cal.—*People v. St. Andrew*, 101 Cal. App. 3d 450, 161 Cal. Rptr. 634 (1st Dist. 1980).  
  
Ind.—*French v. State*, 754 N.E.2d 9 (Ind. Ct. App. 2001).
- 6 Cal.—*People v. Ward*, 266 Cal. App. 2d 241, 72 Cal. Rptr. 46 (1st Dist. 1968).  
  
**Essential part of statutory scheme**  
Cal.—*People v. St. Andrew*, 101 Cal. App. 3d 450, 161 Cal. Rptr. 634 (1st Dist. 1980).
- 7 Cal.—*Rosenfield v. Vosper*, 70 Cal. App. 2d 217, 160 P.2d 842 (2d Dist. 1945).
- 8 Kan.—*State v. Knight*, 219 Kan. 863, 549 P.2d 1397 (1976).
- 9 Ind.—*A.T. v. G.T.*, 960 N.E.2d 878 (Ind. Ct. App. 2012).
- 10 Ind.—*State ex rel. Barlow v. Marion Criminal Court, Division III*, 266 Ind. 202, 361 N.E.2d 1206 (1977).

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